United Nations S/2000/1131

Security Council

Distr.: General
30 November 2000

Original: English

Draft resolution

The Security Council,

Reaffirming its resolutions 827 (1993) of 25 May 1993 and 995 (1994) of 8 November 1994,

Remaining convinced that the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia contributes to the restoration and maintenance of peace in the former Yugoslavia,

Remaining convinced also that in the particular circumstances of Rwanda the prosecution of persons responsible for genocide and other serious violations of international humanitarian law contributes to the process of national reconciliation and to the restoration and maintenance of peace in Rwanda and in the region,

Having considered the letter from the Secretary-General to the President of the Security Council dated 7 September 2000 (S/2000/865) and the annexed letters from the President of the International Tribunal for the Former Yugoslavia addressed to the Secretary-General dated 12 May 2000 and from the President of the International Tribunal for Rwanda dated 14 June 2000,

Convinced of the need to establish a pool of ad litem judges in the International Tribunal for the Former Yugoslavia and to increase the number of judges in the Appeals Chambers of the International Tribunals in order to enable the International Tribunals to expedite the conclusion of their work at the earliest possible date,

Noting the significant progress being made in improving the procedures of the International Tribunals, and convinced of the need for their organs to continue their efforts to further such progress,

Taking note of the position expressed by the International Tribunals that civilian, military and paramilitary leaders should be tried before them in preference to minor actors,

Recalling that the International Tribunals and national courts have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law, and noting that the Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia provide that a Trial Chamber may decide to suspend an indictment to allow for a national court to deal with a particular case,

00-77343 (E) 301100

Taking note with appreciation of the efforts of the judges of the International Tribunal for the Former Yugoslavia, as reflected in annex I to the letter from the Secretary-General of 7 September 2000, to allow competent organs of the United Nations to begin to form a relatively exact idea of the length of the mandate of the Tribunal,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to establish a pool of ad litem judges in the International Tribunal for the Former Yugoslavia and to enlarge the membership of the Appeals Chambers of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, and to this end *decides* to amend articles 12, 13 and 14 of the Statute of the International Tribunal for the Former Yugoslavia and to replace those articles with the provisions set out in annex I to this resolution and *decides also* to amend articles 11, 12 and 13 of the Statute of the International Tribunal for Rwanda and to replace those articles with the provisions set out in annex II to this resolution;

2. *Decides* that two additional judges shall be elected as soon as possible as judges of the International Tribunal for Rwanda and *decides also*, without prejudice to Article 12, paragraph 4, of the Statute of that Tribunal, that, once elected, they shall serve until the date of the expiry of the terms of office of the existing judges, and that for the purpose of that election the Security Council shall, notwithstanding Article 12, paragraph 2 (c) of the Statute, establish a list from the nominations received of not less than four and not more than six candidates;

3. *Decides* that, once two judges have been elected in accordance with paragraph 2 above and have taken up office, the President of the International Tribunal for Rwanda shall, in accordance with Article 13, paragraph 3, of the Statute of the International Tribunal for Rwanda and Article 14, paragraph 4, of the Statute of the International Tribunal for the Former Yugoslavia, take the necessary steps as soon as is practicable to assign two of the judges elected or appointed in accordance with Article 12 of the Statute of the International Tribunal for Rwanda to be members of the Appeals Chambers of the International Tribunals;

4. *Requests* the Secretary-General to make practical arrangements for the elections mentioned in paragraph 2 above, for the election as soon as possible of twenty-seven ad litem judges in accordance with Article 13 ter of the Statute of the International Tribunal for the Former Yugoslavia, and for the timely provision to the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda of personnel and facilities, in particular, for the ad litem judges and the Appeals Chambers and related offices of the Prosecutor, and *further requests* him to keep the Security Council closely informed of progress in this regard;

5. *Urges* all States to cooperate fully with the International Tribunals and their organs in accordance with their obligations under resolutions 827 (1993) and 955 (1994) and the Statutes of the International Tribunals, and *welcomes* the cooperation already extended to the Tribunals in the fulfilment of their mandates;

6. *Requests* the Secretary-General to submit to the Security Council, as soon as possible, a report containing an assessment and proposals regarding the date ending the temporal jurisdiction of the International Tribunal for the Former Yugoslavia;

7. *Decides* to remain actively seized of the matter.

Annex I

Article 12
Composition of the Chambers

1. The Chambers shall be composed of *sixteen* **permanent** independent judges, no two of whom may be nationals of the same State, **and a maximum at any one time of nine ad litem independent judges appointed in accordance with article 13 ter, paragraph 2, of the Statute, no two of whom may be nationals of the same State**.

2. Three permanent judges and a maximum at any one time of six ad litem judges shall be members of each Trial Chamber. Each Trial Chamber to which ad litem judges are assigned may be divided into sections of three judges each, composed of both permanent and ad litem judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the Statute and shall render judgement in accordance with the same rules.

3. *Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.*

Article 13
Qualifications of judges

The **permanent** and **ad litem** judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 13 bis
Election of permanent judges

1. *Fourteen of* the **permanent** judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 13 of the Statute, no two of whom shall be of the same nationality *and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between*

1 January 1994 and 31 December 1994 (hereinafter referred to as "The International Tribunal for Rwanda") in accordance with article 12 of the Statute of that Tribunal;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-eight and not more than forty-two candidates, taking due account of the adequate representation of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect fourteen permanent judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers **amongst the permanent judges** *elected or appointed in accordance with this article*, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 13 of the Statute, for the remainder of the term of office concerned.

3. The **permanent** judges *elected in accordance with this article* shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 13 ter
Election and appointment of ad litem judges

1. The ad litem judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for ad litem judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 13 of the Statute, taking into account the importance of a fair representation of female and male candidates;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than fifty-four candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical distribution;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the twenty-seven ad litem judges of the International Tribunal. The candidates

who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected;

(e) The ad litem judges shall be elected for a term of four years. They shall not be eligible for re-election.

2. During their term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular ad litem judge, the President of the International Tribunal shall bear in mind the criteria set out in article 13 of the Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the ad litem judge received in the General Assembly.

Article 13 quater
Status of ad litem judges

1. During the period in which they are appointed to serve in the International Tribunal, ad litem judges shall:

(a) Benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the International Tribunal;

(b) Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal;

(c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal.

2. During the period in which they are appointed to serve in the International Tribunal, ad litem judges shall not:

(a) Be eligible for election as, or to vote in the election of, the President of the Tribunal or the Presiding Judge of a Trial Chamber pursuant to article 14 of the Statute;

(b) Have power:

(i) To adopt rules of procedure and evidence pursuant to article 15 of the Statute. They shall, however, be consulted before the adoption of those rules;

(ii) To review an indictment pursuant to article 19 of the Statute;

(iii) To consult with the President in relation to the assignment of judges pursuant to article 14 of the Statute or in relation to a pardon or commutation of sentence pursuant to article 28 of the Statute;

(iv) To adjudicate in pre-trial proceedings.

Article 14
Officers and members of the Chambers

1. The *permanent* judges of the International Tribunal shall elect a President *from amongst their number*.

2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.

3. After consultation with the *permanent* judges of the International Tribunal, the President shall assign *four of the permanent* judges *elected or appointed in accordance with Article 13 bis of the Statute* to the Appeals Chamber and *nine* to the Trial Chambers.

4. *Two of the judges elected or appointed in accordance with article 12 of the Statute of the International Tribunal for Rwanda shall be assigned by the President of that Tribunal, in consultation with the President of the International Tribunal, to be members of the Appeals Chamber and permanent judges of the International Tribunal.*

5. *After consultation with the permanent judges of the International Tribunal, the President shall assign such ad litem judges as may from time to time be appointed to serve in the International Tribunal to the Trial Chambers.*

6. A judge shall serve only in the Chamber to which he or she was assigned.

7. The *permanent* judges of each Trial Chamber shall elect a Presiding Judge *from amongst their number*, who shall *oversee the work* of the Trial Chamber as a whole.

Annex II

Article 11
Composition of the Chambers

The Chambers shall be composed of *sixteen* independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) *Seven judges shall be members of* the Appeals Chamber. *The Appeals Chamber shall, for each appeal, be composed of five of its members.*

Article 12
Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. *Eleven of* the judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within *sixty* days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge *who is a member of* the Appeals Chamber *and who was elected or appointed a permanent judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") in accordance with article 13 bis of the Statute of that Tribunal*;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than *twenty-two* and not more than *thirty-three* candidates, taking due account of the adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect *eleven* judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of

the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

3. In the event of a vacancy in the Chambers *amongst the judges elected or appointed in accordance with this article*, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

4. The judges *elected in accordance with this article* shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13
Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. *The President of the International Tribunal for Rwanda shall be a member of one of its Trial Chambers.*

3. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign *two of the judges elected or appointed in accordance with Article 12 of the present Statute to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to* the Trial Chambers *of the International Tribunal for Rwanda.* A judge shall serve only in the Chamber to which he or she was assigned.

4. *The members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.*

5. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.